IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Dharmendra Bera Vs. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.7107/2006

DATE OF ORDER :: January 15, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.G.R.Punia, for the petitioner.

Mr.Rameshwar Dave, Dy.G.A.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, petitioner has prayed for following relief:-

> "It is, therefore, most respectfully prayed that this writ petition may kindly be allowed and-
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> i) by an appropriate writ, order or direction, quash and set aside the order granting sanction to fill up 64 posts of Teacher, Physical Education Gr.II on the basis of application forms filled up three years back, as published in the daily newspaper-Rajasthan Patrika on 03.12.2006.
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> ii) by an appropriate writ, order or

direction, the respondents may kindly be directed to call the fresh applications for the post of Teachers, Physical Education Gr.II and then fill up the posts applied for.

iii) by an appropriate writ, order or direction, the respondents may kindly be directed to accept the application form of the petitioner to participate in the selection process of Teacher, Physical Education-Gr.II.

iv) Cost of the petition be awarded in favour of the humble petitioner."

It is contended by the learned counsel for the petitioner that non-petitioners are duty bound to determine the year-wise vacancies according to the Rules, whereas by Annexure-7, the non-petitioners published a news stating therein that 64 vacancies for Physical Training are being filled after getting the financial sanction from the State Government to those, who have applied three years ago for the post advertised in the year 2003.

It is contended by the learned counsel for the petitioner that the non-petitioners again filled up vacancies advertised in 2003 from the applicants who have submitted the application seeking appointment without determining the year-wise vacancies and advertising afresh.

Learned Deputy Government Advocate appearing for the

State submits that in the year 2003, the vacancies for the Physical Training Teacher Gr.II was advertised and the applications were received and while the selections were under process, one Dharmveer Swami & Ors. filed a writ petition being S.B.Civil Writ Petition No.5709/2003 and by ad interim order dt. 10.10.2003, this Court directed the respondents not to proceed with the selection process in pursuance of advertisement of 18.8.2003 and 19.8.2003. That writ petition came to be dismissed ultimately on 4.11.2004 and the order of Single Judge dt. 4.11.2004 was challenged before the Division Bench by way of Special Appeal, which came to be dismissed on 15.2.2005. Against that order, an SLP was preferred before the Hon'ble Supreme Court, which too came to be dismissed and thereafter only those applications which were invited in 2003, were to be considered and ultimately the sanction for finance has been granted by the State Government.

Learned Deputy Government Advocate submits that Annexure—6 clearly provides that seniority list prepared in pursuance of the advertisement would come to an end on 31.3.2004. Be that as it may, from the facts stated by the learned Deputy Government Advocate as also the counter supported by an affidavit, the process of 2003 could not be proceeded because of ad interim order, special appeal and SLP

and, therefore, that period has to be excluded. In the circumstances, therefore, in my view, the non-petitioners are justified in processing and after dismissal of the SLP, the petition has no force and the same is dismissed.

There shall be no order as to costs.

(H.R.PANWAR),J.

m.asif/-